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### Decision in CPLR Article 78 proceedings - DiLeonardo, Paul (2020-04-28)

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At the term of the Supreme Court of the State of New York, held in and for the County of Dutchess, at 10 Market Street, Poughkeepsie, 12601 on April 28, 2020.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF DUTCHESS

-----X

In the Matter of

PAUL DILEONARDO,

Petitioner

Index No.: 54282/2019

*-against-*

TINA M. STANFORD, Chair of the  
NEW YORK STATE PAROLE BOARD,

Respondent

DECISION AND ORDER  
(Motion Sequence 1)

-----X

Greenwald, J.

The following papers numbered 1-3 were considered by the Court in deciding Petitioner's Notice of Petition/Article 78:

<u>Papers</u>	<u>Numbered</u>
Notice of Petition/Petition by Kathy Manley, Esq. Attorney for Petitioner/ Exhibits A-F	1
Respondent's Answer and Return by Jeane L. Strickland Smith, Esq., Asst. Attorney General/ Exhibits 1-12	2
Petitioner's Reply Affirmation of Kathy Manley, Esq./	3

RELEVANT BACKGROUND

Petitioner files this petition pursuant to CPLR 7803, for an order vacating the Parole Board's Decision, which denied his parole release on February 20, 2019 or in the alternative an immediate de novo hearing before a Board composed of Commissioners who did not participate in the previous hearing or in the administrative appeal.

Petitioner was convicted of Murder - Second Degree and sentenced to fifteen (15) years to life on May 18, 2004, by the Honorable Robert J. Hanophy. *See*, Petitioner's Petition at paragraph 2 and Petitioner's Exhibit B; *see also*, Respondent's Exhibit 2. Petitioner declares that at the hearing for parole release, Petitioner's offense was discussed *extensively*, in light of his comprehensive case plan, completion of a plethora of programs, leadership and volunteer service, commendations from various DOCCS staff, employment offers, letters of support, low COMPAS risk assessment and overall remorse. Petitioner argues that the Parole Board's denial was based solely on the circumstances of the offense without consideration of any other factors, which is unlawful and requires a de novo hearing. Petitioner also argues that the Board failed to give any detailed reasons for the denial or basis for deviating from the COMPAS assessment, which is a basis to vacate the Parole Board's Determination. Petitioner administratively appealed the determination, and the Parole Board's determination was affirmed by the Appeals Unit. Thus, Petitioner has filed this action for judicial review of the Parole Board's determination, alleging it was arbitrary and capricious. *See*, Petitioner's Petition and Petitioner's Exhibit C-F.

Respondent opposes the petition and argues that parole release is discretionary, and the Board has discretion as to the weight it gives the statutory factors considered when making a determination for release. Respondent argues that the Parole Board's decision is not based solely on the offense, as the Board considered all the statutory factors in its decision. Respondent contends that the decision was sufficiently detailed to inform the Petitioner of the reasons for the denial of parole, although it could have been more artfully written. Respondent declares that Petitioner has no constitutional right to be conditionally released on parole before the expiration of a valid sentence thus denial of parole is not tantamount to resentencing. Respondent argues that Petitioner has failed to demonstrate that the Parole Board failed to consider the statutory factors in its determination, or abused the discretion vested upon it to make such determinations that would give a basis to annul the decision. Thus, Petitioner's petition should be denied. *See*, Respondent's Answer and Return

### DISCUSSION

In New York, the Parole Board holds the power to decide whether to release a sentenced prisoner on parole. These decisions are within the Board's discretion, and such discretion is structured by the Board's use of guidelines. When the Parole Board's decisions are made in accordance with statutory requirements, the decisions are not subject to judicial review. However, the judicial review of parole board determinations is narrowly circumscribed and may only be set aside where it evinces irrationality bordering on impropriety. See, Ferrante v Stanford, 172 A.D. 3d 31, 37 (2<sup>nd</sup> Dept. 2019); see also, Matter of Ganci v Hammock, 99 A.D.2d 546, 547 (2<sup>nd</sup> Dept. 1984).

Pursuant to Executive Law §259-i, discretionary release on parole shall not be granted merely as a reward for good conduct or efficient performance of duties while confined but after considering if there is a reasonable probability that, if such inmate is released, he will live and remain at liberty without violating the law, and that his release is not incompatible with the welfare of society and will not so deprecate the seriousness of his crime as to undermine respect for law. The Board must consider the eight factors identified in the statute when making its determination. See, Executive Law §259-i (2) (c) (A).

Although it is well settled that qualified risk and needs assessments are instruments utilized in making parole determinations, these instruments do not supercede the independent discretionary authority of the Parole Board. Thus, while the Parole Board is required to consider the COMPAS instrument when exercising its discretionary authority to determine whether or not petitioners should be released from DOCCS custody it is not bound by the quantified results of the COMPAS assessment and is free to grant or deny parole based upon its independent assessment of the factors set forth in Executive Law §259-i(2)(c)(A) including, the nature of the crimes underlying Petitioner's incarceration. It is well settled that the Parole Board may not deny an inmate parole based solely on the seriousness of the offense. Nonetheless, the weight accorded to any particular factor is solely within a Parole Board's discretion. See, In re Williams, 49 Misc. 3d 732, 743 (Franklin County Sup. Ct. 2015) and Matter of Rabenbauer v New York State Dept. of Corrections and Community Supervision, 46 Misc. 3d 603, 606 (Sullivan County Sup. Ct 2014); see also, Ferrante v Stanford, 172 A.D. 3d 31, 37 (2<sup>nd</sup> Dept. 2019).

Although the Parole Board need not expressly discuss each of these factors in its determination, it is required to inform the inmate in writing of the factors and reasons for the denial of parole, and such reasons shall be given in detail and not in conclusory terms. However, it is the Petitioner's burden to demonstrate that the Parole Board failed to consider the statutory factors set forth in Executive Law §259-i, and the denial was based solely on the seriousness of his crime; moreover, that the Parole Board's determination otherwise evinced irrationality bordering on impropriety. *See, Matter of Goldberg v New York State Bd. of Parole*, 103 A.D. 3d 634, 635 (2<sup>nd</sup> Dept. 2013); *see also, Matter of Malone v Evans*, 83 A.D. 3d 719 (2<sup>nd</sup> Dept. 2011).

Here, the Parole Board appears to have considered the relevant factors and conclude that there is more work for Petitioner to do regarding Petitioner's anger issue, the issue deemed to be a significant factor in the underlying offense, and as such it would be inappropriate to release Petitioner, as to do so would deprecate the serious nature of the crime and undermine respect for the law. *See*, Petitioner's Exhibit A.

There is a rational basis for the Parole Board's decision. While it is understandable that Petitioner desires a more in-depth analysis of how the Board made its determination, this Court cannot deem that it is statutorily required. The determination is written in the simplest form, but it is not in conclusory terms. The decision demonstrates consideration of the Petitioner's adjustments, accomplishments, commendations, COMPAS risk assessment, as well as the opposition to the Petitioner's release and the seriousness of the offense. The weight given to each factor lies within the discretion of the Parole Board and the Board is not required to weigh the factors equally or by any prescribed formula.

An Article 78 reviewing court must not substitute its judgment for the judgment of an administrative agency whose actions it is reviewing unless the agency's decision is arbitrary and capricious. The Court of Appeals held that arbitrary action is without sound basis in reason and is generally taken without regard to the facts. Moreover, once it has been determined that an agency's conclusion has a sound basis in reason the judicial function is at an end. *See, Matter of D.S. v Hogan*, 22 Misc. 3d 527, 537 (New York County Sup. Ct. 2008). To that extent, and based upon the foregoing reasons, this Court finds that the Parole Board's determination to deny Petitioner parole release was not arbitrary and capricious, thus Petitioner's petition is **denied**.

Index No.: 54282-2019

Accordingly, it is hereby,

ORDERED, that Petitioner's Article 78 Petition, seeking vacatur of the Parole Board's decision or in the alternative an immediate de novo hearing is denied.

Any relief not specifically granted herein is denied.

The foregoing constitutes the decision and order of this Court.

Dated: April 28, 2020  
Poughkeepsie, New York

ENTER:



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Hon. Hal B. Greenwald, J.S.C.

CPLR Section 5513, an appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when the appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty days thereof.

**When submitting motion papers to the Honorable Hal B. Greenwald's Chambers, please do not submit any copies. Please submit only the original papers.**